

**STAFF REPORT FOR  
DIMENSIONAL VARIANCE FOR  
ZACH HARSH  
ZONING BOARD OF ADJUSTMENT**

**Thursday, January 24, 2019 9:00 a.m.  
Room 105 Courthouse Annex  
Cascade County Commissioners Chambers**

**Subject Property Information**

|                               |  |
|-------------------------------|--|
| Name & Address of Applicant   | Zach Harsh<br>55 Comanche Trl<br>Great Falls, MT 59404                   |
| Name & Address of Owner       | Zachary W & Laurie A Harsh<br>55 Comanche Trl<br>Great Falls, MT 59404   |
| Geo Code:                     | 02-3015-26-3-03-33-0000  |
| Parcel Number:                | 0002472900   |
| Existing Zoning:              | Suburban Residential One (SR1) District                                  |
| Legal Description:            | Section 26, Township 20 N, Range 03 E                                    |
| Requested Action and Purpose: | Dimensional Variance request to reduce front yard setback                |
| Total Land Area:              | 3.318 Acres  |
| Adjacent Land Uses & Zoning:  | Suburban Residential 1<br>Residential Uses and Vacant Lots               |
| Current Land Use:             | Residential  |
| Applicable Regulations:       | Sections 7.1.0.3 and 9.5 of the Cascade County Zoning Regulations (CCZR) |

**Special Information**

1. Section 7.1.0.3 (2) of the CCZR provides the following required setbacks for front yards in Residential Districts:

*(2) Front Yard*

*The front yard shall not have a depth of less than thirty (30) feet.*

2. The following definition is taken from the CCZR:

**VARIANCE**

*A variance is a relaxation of the terms of these regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship. As used in these regulations, a variance is authorized only for height, area, and size of structure, size of yards and open spaces, signage, landscaping, or as otherwise specifically provided for in these regulations. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or adjoining zoning districts.*

3. Section 9.5.4 of the CCZR requires the concurring vote of three members of the Zoning Board of Adjustment in order to approve a variance request.
4. Public Notice of this Dimensional Variance Request was published in the Great Falls Tribune on [INSERT DATES HERE] and mailed to adjacent property owners on [INSERT DATE HERE]

### **Analysis**

The applicant is requesting a variance to allow a front yard setback of 18.54 feet. Section 9.5.2 of the Zoning Regulations states, "A dimensional variance shall only be granted when the evidence shows and a finding can be made that each of the following conditions exists:

**(1) The variance is not contrary to the public interest.**

***The Applicant responded:*** *The requested variance, if granted will not be contrary to public interest as the impacts will be relatively minimal. It is difficult to find much history and reasoning behind large front yard setback requirements. Primarily, larger front yard setbacks are in place as a corridor preservation in the event there is unforeseen development in a particular area and roadways need to be widened to accommodate growth. The corridor preservation is also in place in the event municipal utilities are extended in the area to prevent costly relocations of structures. Larger front yard setbacks are also provided to protect adequate view triangles for intersecting roadways and private driveways so structures do not impede sight distances when exiting a driveway or turning on an intersecting roadway.*

*The existing roadway easement is approximately 30 feet on either side of the centerline of the roadway with the setback being an additional 30 feet beyond the easement. The structure encroaches on the front yard setback from 0.0' to 11.46' as one corner of the proposed structure is at the 30' setback and the other encroaches into the setback by 11.46' at the worst case. The encroachment still leaves 18.54 feet of setback distance at that location.*

*Given the spirit of the setback, the variance, if granted, should have no negative impact and not be contrary to public interest.*

Staff agrees with the applicant's assessment that this variance would not be contrary to the public interest. The existing condition of this area, informally known as Rolling Hills Estates, reflects a low-density residential use. Comanche Trail, the street that services this property is a loop road that only provides access to approximately 10 residences on that stretch of the road and does not act as a through street. The road is already in place within the dedicated right-of-way and is approximately an additional 20-30 feet from the property line. It is unlikely that this

road would ever be drastically widened or expanded in the near future given the relatively small number of properties being serviced, and the looped nature of the road. Based on these considerations, staff has not found that this proposed variance would be contrary to public interest.

**(2) A literal enforcement would result in an unnecessary hardship, owing to conditions unique to the property.**

***The Applicant Responded:** Rolling Hills Estates was originally platted in 1976 with the subject property being Lot 1, Block 10 and it was 4.30 Acres in size. In 2007, a boundary line adjustment survey was done with an adjacent parcel adjusting its boundary into Lot 1, reducing the overall size to 2.915 Acres. The home on the property was constructed in 2007. In March of 2018, the applicant purchased the property and recorded a boundary line adjustment survey due to an encroachment by a neighboring property. Currently "lot 1" is 3.318 Acres in size.*

*Now, the applicant and current owner of the property wishes to construct at 40' x 60' shop on the property. Various areas on the property was considered for the construction of the shop and the best suited location for the shop was determined to be on the northeast side of the existing residence. The water well serving the property is located on the west side of the residence, thereby requiring the well to be relocated if placing the shop on that side of the residence was a consideration. A subdivision is also being considered by the applicant to divide a parcel from the existing west side of the overall property.*

*The applicant is already faced with the relocation of the septic drain field and the possible relocation of an electrical line. Strict adherence to the regulations would require the applicant to place a significant amount of fill to support the shop. Building a structure on fill is not advisable due to differential settlement concerns and the expense of placing the fill.*

With regards to this property, Staff considered the location of existing services and the necessity to move existing services to accommodate a suitably buildable area for this proposal. The well located on the Western side of the residence precludes the relocation of the septic system and drainfield to that area, based on a minimum distance requirement of 100 feet, as established by the Department of Environmental Quality, between wells and septic systems. Additionally, terrain conditions restrict construction on the property, and would require extensive fill and grading to create a suitable site for development in proximity to the house. When possible, Planning staff prefers to maintain natural slopes and grades in order to create minimal disturbances on the environment and ecosystems, in addition to construction considerations such as settling foundations and erosion. The structure could potentially be located on the far west side of the property, however creating additional accesses and expanding the driveway that distance would create further disturbance that may impact the ecology and create adverse stormwater impacts, staff advises that the new structure would be best suited to construction in proximity to the residence. Based on these considerations, Staff has found that a literal enforcement of the regulations would result in an unnecessary hardship, owing to conditions unique to the property.

**(3) The spirit of this Section would be observed and substantial justice done by granting the variance.**

***The Applicant Responded:** The applicant believes that the spirit of the section will be observed as a significant setback distance and area is still available and the encroachment is*

*minimal overall. The overall setback area along the frontage of this lot is 12,535.6 square feet with an approximate encroachment area of 228 square feet in the setback area, or 1.82% of the overall area.*

*The applicant wishes to construct a shop adjacent to the existing residence for a specific functionality so the existing driveway and improvements can be utilized effectively. Situating the structure on any other place on the property would prevent the applicant from using the shop as planned. Also, given the angle of the existing residence constructing the shop in complete compliance with the zoning regulations would create an odd angle between the two structures. Therefore, it is believed that substantial justice would be done by granting the variance.*

Staff has found that allowing the applicant to have a reduced front yard setback would not create any issues related to traffic. The topography, landscaping, and water/wastewater considerations largely restrict development to this small location of the property where the variance is requested, and staff has found that the spirit of this section would be observed and substantial justice done by granting this variance.

**Motions:**

The following motions are provided for the Board's consideration:

1. the variance to allow for a reduced front yard setback to eighteen (18) feet for an addition to the residence on parcel #0002472900 be **denied**,  
or
2. the variance to allow for a reduced front yard setback to eighteen (18) feet for an addition to the residence on parcel #0002472900 be **approved**.

Attachments:           Variance Application  
                              Site Map